

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PATRICK SCOTT,

Petitioner,

v.

RICK M. HILL, Warden,

Respondent.

No. C-13-0245 TEH (PR)

ORDER TO SHOW CAUSE

Petitioner Patrick Scott, a state prisoner incarcerated at Folsom State Prison, Folsom, California, has filed a pro se Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254 challenging a judgment of conviction from Alameda County Superior Court. Doc. #1. Petitioner has paid the \$5.00 filing fee.

I

According to the Petition, in April 1992, Petitioner was sentenced to twenty-six years to life pursuant to a conviction of aiding and abetting murder. Doc. #1 at ii. In July 2012, Petitioner sought post-conviction relief in the California Supreme Court, which denied the petition on November 20, 2012. Doc. #1 at 4, 7. The instant federal Petition for a Writ of Habeas Corpus followed. He raises the following claims: (1) factual innocence based on new evidence of a ballistic test that was not available at trial; (2) prosecutorial misconduct based on a violation of Brady v. Maryland, 373 U.S. 83 (1963); and (3) equitable tolling based on ineffective assistance of counsel. He also asserts that he has

1 shown cause for his procedural default in state court. Doc. #1 at
2 viii.

3 II

4 This Court may entertain a petition for a writ of habeas
5 corpus "in behalf of a person in custody pursuant to the judgment of
6 a State court only on the ground that he is in custody in violation
7 of the Constitution or laws or treaties of the United States." 28
8 U.S.C. § 2254(a). It shall "award the writ or issue an order
9 directing the respondent to show cause why the writ should not be
10 granted, unless it appears from the application that the applicant
11 or person detained is not entitled thereto." Id. § 2243.

12 Liberally construed, Petitioner's claims appear cognizable
13 under 28 U.S.C. § 2254 and merit an Answer from Respondent. See
14 Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001) (federal courts
15 must construe pro se petitions for writs of habeas corpus
16 liberally).

17 III

18 For the foregoing reasons and for good cause shown,

19 1. The Clerk shall serve by certified mail a copy of
20 this Order and the Petition, and all attachments thereto (Docs. ##1-
21 3), on Respondent and Respondent's attorney, the Attorney General of
22 the State of California. The Clerk also shall serve a copy of this
23 Order on Petitioner.

24 2. Respondent shall file with the Court and serve on
25 Petitioner, within sixty (60) days of the issuance of this Order, an
26 Answer conforming in all respects to Rule 5 of the Rules Governing
27 Section 2254 Cases, showing cause why a writ of habeas corpus should
28

1 not be granted. Respondent shall file with the Answer and serve on
2 Petitioner a copy of all portions of the state trial record that
3 have been transcribed previously and that are relevant to a
4 determination of the issues presented by the Petition.

5 If Petitioner wishes to respond to the Answer, he shall do
6 so by filing a Traverse with the Court and serving it on Respondent
7 within thirty (30) days of his receipt of the Answer.

8 3. In lieu of an Answer, Respondent may file a Motion to
9 Dismiss on procedural grounds, as set forth in the Advisory
10 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases.
11 If Respondent files such a motion, Petitioner shall file with the
12 Court and serve on Respondent an Opposition or Statement of
13 Non-Opposition within thirty (30) days of receipt of the motion, and
14 Respondent shall file with the Court and serve on Petitioner a Reply
15 within fifteen (15) days of receipt of any Opposition.

16 4. Petitioner is reminded that all communications with
17 the Court must be served on Respondent by mailing a true copy of the
18 document to Respondent's counsel. Petitioner also must keep the
19 Court and all parties informed of any change of address.

20
21 IT IS SO ORDERED.

22
23 DATED 02/11/2013



THELTON E. HENDERSON
United States District Judge